

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON HB 473**

**Call to Order:** By **Senator William Crismore, Chair**, on April 6, 2001 at 11:02 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:** Sen. William Crismore, Chair  
Sen. Glenn Roush  
Rep. Cindy Younkin, Vice Chair  
Rep. Doug Mood  
Rep. Gail Gutsche

**Members Excused:** Sen. Fred Thomas

**Members Absent:** None.

**Staff Present:** Larry Mitchell  
Jan Brown, Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

#### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 473, 4/6/2001  
Executive Action: HB 473

#### **FREE CONFERENCE COMMITTEE ON HB 473**

**{Tape : 1; Side : A; Approx. Time Counter : 2}**

The meeting was called to order by **Senator William Crismore, Chair** at 11:02 a.m.

**Rep. Younkin** asked if they had to refer to the pink Senate amendments or if she could propose amendments. **Chairman Crismore** said that since this is a free conference committee, those amendments are provided just for reference. **Rep. Younkin** distributed two sets of suggested amendments, the first set numbered HB047306.alm, dated March 29, 2001, and the second set

numbered HB047309.alm, dated April 6, 2001. She said she would discuss the March 29 amendments first.

**{Tape : 1; Side : A; Approx. Time Counter : 3.9}**

**Rep. Younkin** said that her understanding, based on her discussion with lots of people, is that everybody is satisfied with the first amendment. That's the one where on page 3 of the orange bill, line 23, after the word "on" the words "this chapter." are inserted. The rest of subsection (a) through line 25 is deleted. Subsection (a) would then read, "The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on this chapter." The next amendment, number 2 on that one, starts on line 30 of page 3, and after the word "measures" it takes out the middle of that subsection and then adds the word "that", so entire subsection (b) would read "Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act." Amendment number 3 strikes line 4 on page 4.

**Rep. Younkin** said that some of the departments are concerned that there is some ambiguity, going back to lines 22 and 23 on page 3, as to how this applies to the agency when there is an agency-initiated action or when the agency is the project sponsor. In order to alleviate that concern and make it clear and make it so there is no ambiguity, that's the second amendment that she distributed, dated April 6, 2001. She crossed out amendment number 2, because it conflicted with number 3, and she had never intended for them to do both number 2 and 3. The numbering needs to be changed and she requested that Mr. Mitchell be given the discretion to appropriately number it. Amendment number 3 would be modified a little bit, and would read as follows: "Proposed actions for which the agency is the project sponsor may be modified by the agency only (*insert the word "only"*) to comply with a statute or regulation (*instead of statutory or regulatory; and then delete the word "requirement"*) based on the information resulting from an environmental review of the action." Her intention with the third amendment dated April 6 is to make it clear to the departments and remove any question of ambiguity as to how it applies to them if there is a state or an agency-initiated action. The problem with amendment number 4 was that nobody knew what an agency-initiated action was; that's not defined anywhere. But we do have project sponsors defined, so if the agency is the project sponsor, then this is how this would apply, and that is amendment number 3 on the April 6 amendments.

**Questions from Committee Members and Responses:**

**{Tape : 1; Side : A; Approx. Time Counter : 8}**

**Sen. Roush** asked why the word "certain" had to be added to the title. **Rep. Younkin** said that because of subsection (b), starting on line 29 of page 3, that allows the project sponsor and the agency to mutually agree, basically, to condition themselves based on the environmental review. So it really is certain actions, not all actions. That was an amendment called to her attention by Mr. Mitchell that should have been put on when lines 29 on the bottom of page 3 through line 3 on the top of page 4 were added. The title should have been amended by the Senate committee.

**{Tape : 1; Side : A; Approx. Time Counter : 9.9}**

**Rep. Gutsche** asked for and the committee granted permission to have **John North**, Department of Environmental Quality, comment on the final proposed amendment. **Rep. Gutsche** said she had discussed the proposed amendment with Mr. North, but now that it had changed, she wanted his interpretation of what it says and whether he thinks it is clear. **Mr. North** said he thinks that the language applies to what has been loosely referred to as agency-initiated actions, one where there's not some kind of a process where somebody applies to the agency and then the agency takes action, for example, in a regulatory context where somebody applies for a permit. It's applying to actions that the agency has authority to undertake without any application. For his agency, DEQ, an example would be an abandoned mine land project. What this then says to him is that the agency could do the abandoned mine land project under its existing authority, but if it does, or when it does, an environmental review under MEPA and there's some impact revealed there, the only way that the agency can do anything about the impact is if it is required to do so by some other statute or rule, for example, the Water Quality Act, or if they have rules that say abandoned mine lands must be reclaimed to certain standards. Those would be the only instances in which they would be able to mitigate the impact.

**Rep. Gutsche** asked **Mr. North** if it isn't in statute or if there isn't a regulation, if there then is no way to cover the projects. **Mr. North** said that the agency wouldn't have the authority to mitigate that particular impact. **Rep. Gutsche** asked about state timber sales. **Mr. North** said that he hesitated to talk about them, since he hasn't been with the State Land Department since July 1, 1995, but certainly they are agency-initiated actions, because it's DNR that decides what timber sales it's going to put up. DNR does environmental review documents under MEPA, and he thinks that DNR is bound by the stream site management law and would be bound by the Water

Quality Act and that it couldn't perform a timber sale in such a manner to create pollution. He thinks those would probably be the only regulatory requirements that would pertain to the timber sales.

***{Tape : 1; Side : A; Approx. Time Counter : 14.6}***

**Rep. Gutsche** said that she particularly finds the last amendment to not be a good amendment based on what Mr. North just said, because now the agency will not have the authority to do any mitigating if there isn't a statute or regulation. So that is why she liked Rep. Younkin's first amendment better, and she actually liked the Senate amendments better because they addressed some of this a little better. She asked if Rep. Younkin had moved the amendments.

***{Tape : 1; Side : A; Approx. Time Counter : 15.2}***

**Motion:** REP YOUNKIN MOVED THE AMENDMENTS. **Rep. Gutsche** asked if she was moving them as a group, and **Rep. Younkin** said yes.

**Substitute Motion:** REP. GUTSCHE MOVED TO SEGREGATE AMENDMENT NUMBER 3 of amendment number HB047309, dated April 6, 2001.

**Chairman Crismore** said this amendment would be segregated, and the committee would discuss the remaining amendments, number 1 from HB047309 dated April 6 and number 1, 2 and 3 from HB047306, dated March 29.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 16.1}***

**Rep. Gutsche** asked about the second amendment on the March 29 amendments, where the language is stricken on protecting public health or safety, mitigating impacts, etc. She liked the language and thought it gave good direction, and had thought it was going to stay in the bill, so she wondered why **Rep. Younkin** was trying to remove it. **Rep. Younkin** said that her intention on the House floor was to say that it was being discussed, not to say that it would or would not be removed. The premise with that is to not prohibit a project sponsor and the agency from mutually agreeing to do something based on the environmental review document. She doesn't care what it is that they do, and she didn't want them to be limited to public health or safety, or fish or wildlife resources, or anything else. Whatever they want to agree upon is fine with her. She thought this was limiting, and if it is taken out and the word "that" is inserted, it's wide open and they can then mutually agree to whatever measures they want to mutually

agree to. She didn't want there to be any limitations on the project sponsor and the agencies' ability to agree to other measures.

**Rep. Gutsche** said her problem with that is that she thinks public health or safety is fairly broad and gives them good direction, which seemed to be what the folks working on the MEPA bills were wanting to do, to give direction rather than have things be wide open, so to her it doesn't make sense to remove this language. It makes sense to leave it in to have some definition for them, some guidelines for them to know what it is you want them to look at.

***{Tape : 1; Side : A; Approx. Time Counter : 18.7}***

**Sen. Roush** said he would concur that the words "to protect public health and safety" should be in there because it's good language to show the people of Montana that there is a concern for public health and safety. That broad term may be in every department, but he thinks that in this bill, which he supported, that the language should probably remain. Regarding the third amendment, from what he heard from Mr. North's comment relating to water quality, whether it be in mining or logging, he knows there is a real concern in the logging industry about the effect of water quality when they have to cross a stream. There is another pending bill that addresses water quality problems. If it would be adopted, he wouldn't be so concerned about this amendment, but if it isn't adopted, he has concerns about this amendment. We all know what the problem is in mining, and that the mining isn't the problem but it's the water quality issue, and it's time that everybody realizes that we have to take care of that problem.

**Rep. Mood** said he talked with his resource manager about this issue, and in the real world, when the DNR Land Dept. puts out a contract for timber sale prices, there are significant and numerous measures in that contract that are specifically designed to address the concerns of the experts that are employed by the department in order to make that contract reflect what they feel is the best on-the-ground job that they can do. They include a number of things, such as the elk calving grounds. They have wildlife biologists on staff to address those issues, and the contract will address those issues for the individual who is awarded the contract. It is done by mutual agreement. It has nothing to do with whether the MEPA documentation says one thing or another. That's the way the real world works.

**Sen. Roush** said he isn't so worried about the logging part, but this segregated amendment number 3 addresses mining cleanup too, and that is his concern.

**Rep. Gutsche** said that she didn't doubt that there are things that are mutually agreed upon between the agency and the contractor, and that's great, but she didn't see any reason not to have it in statute to give some guidelines.

*{Tape : 1; Side : A; Approx. Time Counter : 25.1}*

**Motion/Vote:** REP. YOUNKIN moved that AMENDMENTS 1, 2 & 3 of HB047306.alm DATED MARCH 29, 2001, and AMENDMENT 1 of HB047309.alm DATED APRIL 6, 2001, DO PASS. Motion carried, 5-1, with Rep. Gutsche voting no. (Sen. Thomas voted aye by proxy.)

*{Tape : 1; Side : A; Approx. Time Counter : 25.6}*

Discussion was held on the segregated amendment number 3. **Rep. Younkin** responded to Sen. Roush's previous comments, saying that this amendment would only apply to proposed actions where the agency is the project sponsor. The only time an agency would be the project sponsor involving mines is if it is an abandoned mine, under the abandoned mine statutes within the DEQ's purview. Those statutes, plus the Clean Water Act, and potentially the Water Use Act, would provide all of the parameters necessary for the DEQ to do an appropriate clean up to restore those waters of whatever source it may be, under existing law. She doesn't think there is any gap there. The Clean Water Act is pretty specific about all kinds of things, and if there is to be some use of that water in order to do that, it may be necessary to do it under the Water Use Act as well. She has no concerns with that. With regard to state lands and timber contracts, the State Lands Enabling Act and the organic statutes underneath that guide the State Lands Trust Division within DNRC are very broad. They have very broad discretion and ability to manage all the state lands the way they see fit, so she doesn't see that the agency's hands are necessarily tied, because there's going to be enough discretion under their organic act, in Title 77, for the agency to properly manage the state lands under that act, and they don't have to use MEPA to do that. There's nothing in the law that specifies how to take care of wildlife on state lands, but their statutes are broad enough that they have discretion to appropriately manage them as they see fit.

**Chairman Crismore** said he's had many timber sale and other contracts with the state, and they're already under guidelines of a set of laws and rules that he's had to completely abide by. The Stream Site Act is a good law and is very restrictive. Industry at this point is the only one in the state that's really affected by that law. He cited several personal experiences with its enforcement. He thinks we are already protected by existing laws.

**Rep. Gutsche** said she didn't like the amendment to start with, and now it says that the agency only can comply with the statute or regulation. There's lots of stuff that are not in statute or are not regulated, and we know that timber sales and abandoned mines may be among them, and so this really limits what the agency can do. She didn't know what the discussion had been in the Senate, and had thought the Senate amendments that are now being undone were really good.

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Discussion was held on the votes in the Senate on the bill and on the amendments and how the Senate members of this committee had voted on them.

***{Tape : 1; Side : B; Approx. Time Counter : 4.1}***

**Motion/Vote: REP. YOUNKIN MOVED THAT AMENDMENT 3 of HB047309.alm DATED APRIL 6, 2001 DO PASS. Motion carried, 5-1, with Rep. Gutsche voting no. (Sen. Thomas voted aye by proxy.)**

**ADJOURNMENT**

Adjournment: 11:35 A.M.

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SEN. WILLIAM CRISMORE, Chairman

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JAN BROWN, Secretary

wc/jb

**EXHIBIT** (frh78hb0473aad)